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107TH CONGRESS
1ST SESSION

H. R. 758

To provide for substantial reductions in the price of prescription drugs for Medicare beneficiaries and for women diagnosed with breast cancer.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2001

Mrs. MCCARTHY of New York (for herself, Mr. GRUCCI, Mr. ACKERMAN, Mrs. MINK of Hawaii, and Mr. DOGGETT) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To provide for substantial reductions in the price of prescription drugs for Medicare beneficiaries and for women diagnosed with breast cancer.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Breast Cancer Prescription Drug Fairness Act of 2001''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) All women are at risk for breast cancer and that risk increases with age.

(2) Breast cancer is the most common cancer among women.

(3) Annually, there are 180,200 new cases of breast cancer in the United States, and 2,000 on Long Island, New York, alone.

(4) Manufacturers of prescription drugs engage in price discrimination practices that compel many older Americans and women to pay substantially more for prescription drugs than the drug manufacturers' most favored customers, such as health insurers, health maintenance organizations, and the Federal Government.

(5) On average, older Americans and women who buy their own prescription drugs pay twice as much for prescription drugs as the drug manufacturers' most favored customers. In some cases, older Americans and women pay over 15 times more for prescription drugs than the most favored customers.

(6) The discriminatory pricing by major drug manufacturers sustains their annual profits of $20,000,000,000, but causes financial hardship and impairs the health and well-being of millions of older Americans and women. More than one in eight older

Americans and women are forced to choose between buying their food and buying their medicines.

(7) Most federally funded health care programs, including Medicaid, the Veterans Health Administration, the Public Health Service, and the Indian Health Service, obtain prescription drugs for their beneficiaries at low prices. Medicare beneficiaries are denied this benefit and cannot obtain their prescription drugs at the favorable prices available to other federally funded health care programs.

(8) Implementation of the policy set forth in this Act is estimated to reduce prescription drug prices for Medicare beneficiaries by more than 40 percent.

(9) In addition to substantially lowering the costs of prescription drugs for older Americans and women, implementation of the policy set forth in this Act will significantly improve the health and well-being of older Americans and women and lower the costs to the Federal taxpayer of the Medicare program.

(10) Older Americans and women who are terminally ill and receiving hospice care services represent some of the most vulnerable individuals in our nation. Making prescription drugs available to Medi-

care beneficiaries under the care of Medicare-certified hospices will assist in extending the benefits of lower prescription drug prices to those most vulnerable and in need.

(b) PURPOSE.—The purpose of this Act is to protect women diagnosed with breast cancer and Medicare beneficiaries from discriminatory pricing by drug manufacturers and to make prescription drugs available to Medicare beneficiaries at substantially reduced prices.

SEC. 3. PARTICIPATING MANUFACTURERS.

(a) IN GENERAL.—Each participating manufacturer of a covered outpatient drug shall make available for purchase by each pharmacy such covered outpatient drug in the amount described in subsection (b) at the price described in subsection (c).

(b) DESCRIPTION OF AMOUNT OF DRUGS.—The amount of a covered outpatient drug that a participating manufacturer shall make available for purchase by a pharmacy is an amount equal to the aggregate amount of the covered outpatient drug sold or distributed by the pharmacy to Medicare beneficiaries.

(c) DESCRIPTION OF PRICE.—The price at which a participating manufacturer shall make a covered outpatient drug available for purchase by a pharmacy is the price equal to the lower of the following:

(1) The lowest price paid for the covered outpatient drug by any agency or department of the United States.

(2) The manufacturer's best price for the covered outpatient drug, as defined in section 1927(c)(1)(C) of the Social Security Act (42 U.S.C. 1396r–8(c)(1)(C)).

SEC. 4. SPECIAL PROVISION WITH RESPECT TO HOSPICE PROGRAMS.

For purposes of determining the amount of a covered outpatient drug that a participating manufacturer shall make available for purchase by a pharmacy under section 3, there shall be included in the calculation of such amount the amount of the covered outpatient drug sold or distributed by a pharmacy to a hospice program. In calculating such amount, only amounts of the covered outpatient drug furnished to a Medicare beneficiary enrolled in the hospice program shall be included.

SEC. 5. ADMINISTRATION.

The Secretary shall issue such regulations as may be necessary to implement this Act.

SEC. 6. REPORTS TO CONGRESS REGARDING EFFECTIVENESS OF ACT.

(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, and annually thereafter,

the Secretary shall report to the Congress regarding the effectiveness of this Act in—

(1) protecting Medicare beneficiaries from discriminatory pricing by drug manufacturers, and

(2) making prescription drugs available to Medicare beneficiaries at substantially reduced prices.

(b) CONSULTATION.—In preparing such reports, the Secretary shall consult with public health experts, affected industries, organizations representing consumers and older Americans and women, and other interested persons.

(c) RECOMMENDATIONS.—The Secretary shall include in such reports any recommendations they consider appropriate for changes in this Act to further reduce the cost of covered outpatient drugs to Medicare beneficiaries.

SEC. 7. DEFINITIONS.

In this Act:

(1) PARTICIPATING MANUFACTURER.—The term ''participating manufacturer'' means any manufacturer of drugs or biologicals that, on or after the date of the enactment of this Act, enters into a contract or agreement with the United States for the sale or distribution of covered outpatient drugs to the United States.

(2) COVERED OUTPATIENT DRUG.—The term ''covered outpatient drug'' has the meaning given that term in section 1927(k)(2) of the Social Security Act (42 U.S.C. 1396r–8(k)(2)).

(3) MEDICARE BENEFICIARY.—The term ''Medicare beneficiary'' means an individual entitled to benefits under part A of title XVIII of the Social Security Act or enrolled under part B of such title, or both, and includes individuals who are not so entitled or enrolled but who have been diagnosed with breast cancer.

(4) HOSPICE PROGRAM.—The term ''hospice program'' has the meaning given that term under section 1861(dd)(2) of the Social Security Act (42 U.S.C. 1395x(dd)(2)).

(5) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

SEC. 8. EFFECTIVE DATE.

The Secretary shall implement this Act as expeditiously as practicable and in a manner consistent with the obligations of the United States.

SEC. 9. STUDY ON LIFE EXPECTANCY OF WOMEN DIAGNOSED WITH BREAST CANCER WHO LACK PRESCRIPTION DRUG COVERAGE.

(a) STUDY.—The Secretary of Health and Human Services, acting through the Director of the Center for Disease Control and Prevention, shall conduct a study on women diagnosed with breast cancer and analyze the effect, if any, that the lack of prescription drug coverage has on the life expectancy of such women.

(b) REPORT.—By not later than one year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the study conducted under subsection (a).

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